

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**DAVID GARRELTS
PALO ALTO COUNTY, IOWA
ID #62566**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2012-AFO- 19

**TO: David Garrelts
103 N. Superior St.
Emmetsburg, IA 50536-1013**

I. SUMMARY

This Administrative Consent Order (Order) is entered into between David Garrelts and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Jennifer Christian
IDNR Field Office #3
1900 North Grand Ave., Suite E17
Spencer, IA 51301
Ph: (712) 262-4177
Fax: (712) 262-2901

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued

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pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. David Garrelts owns a swine confinement operation located in the NW¼ of the NW¼ of Section 25, T95N, R34W (Silver Lake Township), Palo Alto County, Iowa. The operation has a capacity for 5,200 head (2,080 animal units) and utilizes deep below-building pits for manure storage.

2. On August 10, 2012, Department Field Office #3 (FO3) investigated a complaint that the below-building pits at Mr. Garrelts' operation were overflowing. Manure was flowing from the north confinement barn, traveling west and collecting in the road ditch. A drainage tile intake was observed in the road ditch approximately 20 yards from the ponded manure. While manure was not entering the intake at the time of the investigation, it appeared that had occurred in the past because dry manure residue was observed in the ditch surrounding the intake. No evidence of manure was observed in the stream down gradient of the drainage tile intake. Manure had also overflowed from the middle confinement building, and Mr. Garrelts was pumping and land-applying manure from this building as the investigation progressed. He explained that a water line break in the spring had caused the pit beneath the north building to fill up, necessitating the transfer of manure to the middle and south building pits. Then, Mr. Garrelts continued to explain, extreme summer heat resulted in excessive water use to cool the animals, causing the north and middle building pits to overflow, beginning on August 8, 2012. Mr. Garrelts stated that he had hauled six loads of manure to a silage-harvested field several miles away and that a corn field directly north of the operation would be chopped for silage in two days, so that field would be used to land-apply manure until sufficient manure storage was restored in both pits.

3. A follow-up inspection by FO3 staff on August 13, 2012, confirmed that the pits were no longer overflowing and that the driveway had been raised to contain the spilled manure.

4. FO3 staff contacted Mr. Garrelts via telephone for an update on August 22, 2012. He reported that each building's pit had six inches of freeboard and that the current hog selling cycle would stop manure inflow for a short time. Upon questioning, Mr. Garrelts admitted that he was not certified as a confinement site applicator for the last three years.

5. On August 23, 2012, FO3 staff again visited the Garrelts operation and observed that one of the pits had less than one inch of freeboard. FO3 staff recommended that Mr. Garrelts immediately become certified so he could land apply manure or hire a commercial manure applicator. Later that day Mr. Garrelts reported that he had taken the training to become certified and had mailed the application form and payment to the Department for processing.

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IV. CONCLUSIONS OF LAW

1. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. Iowa Code §459.311(1) and 567 IAC 65.2(3) require that each confinement feeding operation retain all manure produced in the confinement enclosures between periods of manure application. The foregoing facts document that these provisions were violated.

3. 567 IAC 65.2(9) requires any person storing, handling, transporting, or land applying manure from a confinement feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

4. Iowa Code §459.315(1) and 567 IAC 65.19(1) prohibit the land application of dry or liquid manure by a confinement site manure applicator unless the person is certified; this prohibition does not apply if the manure originates from a small animal feeding operation. "Confinement site manure applicator" as defined in 567 IAC 65.1 means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure. The Garrelts operation is not a small animal feeding operation because its animal unit capacity exceeds 500 animal units. Therefore, the foregoing facts document that these provisions were violated.

V. ORDER

THEREFORE, the Department hereby orders and David Garrelts consents to do the following:

1. Comply with all minimum manure control and manure applicator certification requirements.

2. Manage the number of animals housed in this operation, maintain manure storage capacity and ensure availability of land for manure application in order to retain all manure between periods of land application.

3. Observe on a weekly basis the level of manure (number of feet below the top of each pit) in each below-building pit that contains manure, record these observations on a weekly basis and submit this log to Department FO3 upon request.

4. When observations required in paragraph 3, above, reveal that the level of manure in any of the below-building pits is less than 1 foot below the top of the pit, immediately notify

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Department FO3 via telephone of this observation, and then pump down and properly land apply manure from the pit within one week. If land application of manure is not possible or appropriate you are required to contact Department FO3 for alternatives.

5. Pay an administrative penalty of \$5,675.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. Mr. Garrelts has been land applying manure himself for three years while not being certified as a confinement site manure applicator. To obtain certification he would have had to attend the training and pay the certification fee of \$100.00 for the three year period plus the annual \$25.00 education fee for a total of \$175.00. In addition, Mr. Garrelts avoided the expense of land applying manure that overflowed for more than two days. Because the amount of manure that overflowed is unknown the actual savings cannot be calculated but is estimated to be at least an additional \$500.00. Therefore, \$675.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. The manure applicator certification program was created to educate manure applicators on how to properly apply manure and how to properly respond to a manure spill. Applying manure without the proper training and certification increases the risk of manure polluting the environment if handled improperly. Mr. Garrelts has violated this provision continuously for 3 years. Further, the failure to retain manure and the failure to report a manure release threaten water quality. Therefore, \$4,000.00 is assessed for this factor.

c. Culpability. Mr. Garrelts has been operating this facility for over eight years and has a duty to become and remain knowledgeable of the Department's requirements pertaining to minimum

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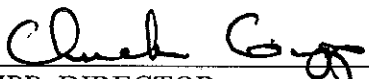
manure control and manure applicator certification. Therefore, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of David Garrelts. By signature to this Order, all rights to appeal this Order or any part thereof are waived by David Garrelts.

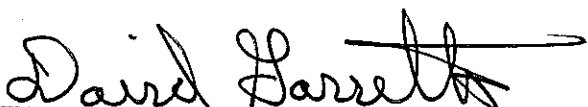
VIII. NONCOMPLIANCE

Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 29th day of
November, 2012.



DAVID GARRELTS

Dated this 24 day of
November, 2012.

Field Office 3(Jennifer Christian); Randy Clark; Ken Hessenius; EPA; VIII. D.1.a, D.2.d, D.4